

**Department of Veterans Affairs**

**Report**

**To**

**The Committee on Veterans Affairs of the Senate**

**And**

**The Committee on Veterans Affairs of the House of  
Representatives**

**On the Activities of the**

**Office of Accountability and Whistleblower Protection**



For the Period:

June 30, 2017 – June 30, 2018

This report is required under 38 U.S.C. §323(f)

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The Department gathered the best available data to provide baseline information to assist in evaluating the impact of the VA Accountability and Whistleblower Protection Act. This additional data is presented as an appendix to this report.

## Introduction

The Office of Accountability and Whistleblower Protection (OAWP) represents the culmination of many years of effort to improve accountability within the Department of Veterans Affairs and to establish a new capability to centrally receive and address whistleblower disclosures. Congress built on and strengthened the capabilities developed internally by the Department creating OAWP through Public Law 115-41 in 2017.

OAWP absorbed and expanded on the work formerly performed by the Office of Accountability Review and the Central Whistleblower Office to establish an intake, investigation, and accountability vehicle to support the VA Secretary's efforts to better fulfill the Department's mandate to "...care for [those] who have borne the battle...".

OAWP is led by Executive Director Kirk Nicholas who provides oversight for the Secretary's accountability agenda. OAWP is headquartered in Washington DC and has satellite resources and programs across the United States.

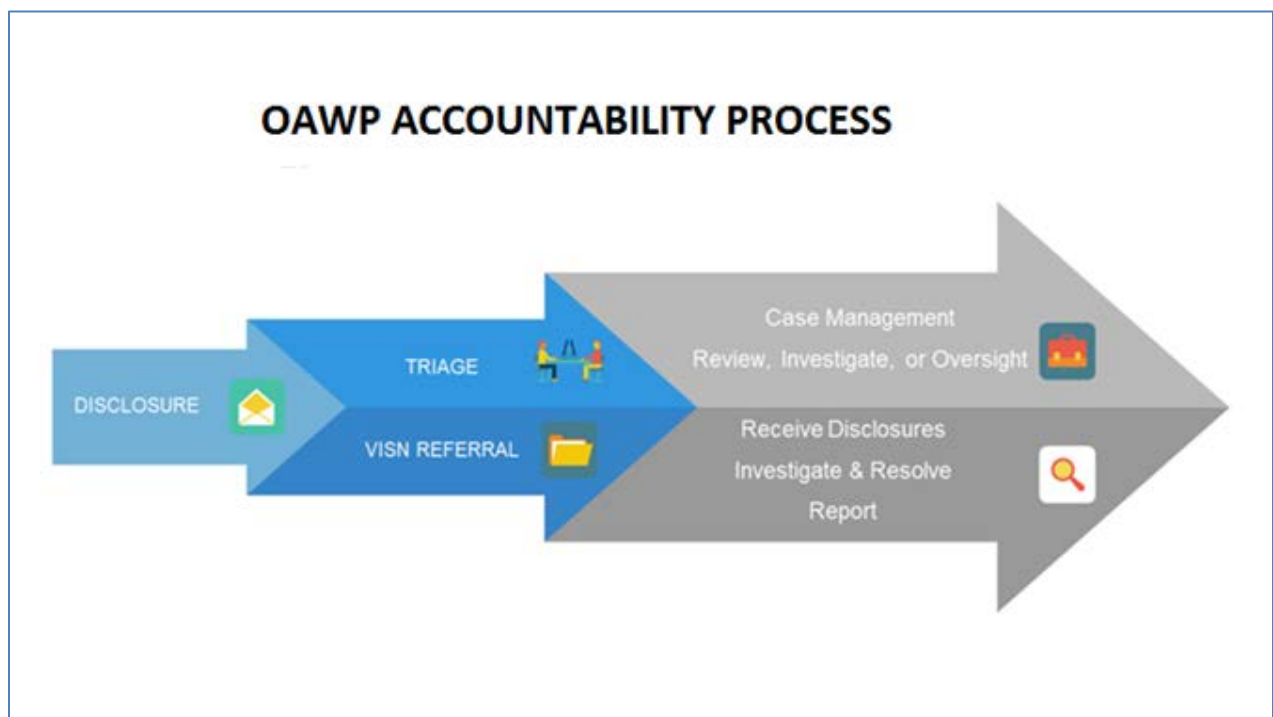
OAWP serves to improve the performance and accountability of VA senior executives and employees through thorough, timely, and unbiased investigation of all allegations and concerns. Where these actions are found factually true, OAWP will provide recommended actions related to the Senior Executive or other senior leader's removal, demotion or suspension based on poor performance and/or misconduct. Additionally, OAWP provides protection of valued VA whistleblowers against retaliation for their disclosures under the whistleblower protection provisions of 38 U.S.C. section 714.

OAWP is dedicated and empowered to provide transparency and build public trust and confidence throughout the entire VA system. The Office is committed to preserving the cultural integrity of the Department and conducting balanced, fair and efficient investigation of VA whistleblower disclosures, timely remedial resolutions and responsive recommendations.

This report is required under 38 U.S.C. §323(f) as a description of OAWP's activities over the preceding year and recommendations for improvements in VA accountability and whistleblower protection.

## Background

The Office of Accountability and Whistleblower Protection (OAWP) is a newly created Office within the Department of Veterans Affairs (VA) dedicated to improving the ability of the Department to meet needs of Veterans through investigation of whistleblower disclosures and allegations of senior executive misconduct or poor performance. On April 27, 2017 the President of the United States signed Executive Order 13793 creating OAWP to advise and assist the Secretary of Department-wide issues of accountability. OAWP's roles and responsibilities were expanded significantly by Public Law 115-41, enacted June 23, 2017.



General workflow of disclosures submitted to OAWP

Investigation and resolution of Senior Leader misconduct has been the topic of multiple memoranda from VA Leadership over the years, centralizing the reporting, investigation, and resolution of these matters in various forms. In its last incarnation, the Office of Accountability Review (OAR) was created within the Office of General Counsel to elevate and address these issues. This office, formed in response to access to care issues, revealed gaps that could only be effectively addressed through action above the individual Administrations and Staff Offices.

OAWP was initially established through Executive Order 13793, Improving Accountability and Whistleblower Protection at the Department of Veterans Affairs, signed on April 27, 2017. Mr. Peter O'Rourke was appointed as the first Executive Director on May 12, 2017. Under the Executive Order the fledgling office was directed to:

- (a) Advise and assist the Secretary in using, as appropriate, all available authorities to discipline or terminate any VA manager or employee who has violated the public's trust and failed to carry out his or her duties on behalf of veterans, and to recruit, reward, and retain high-performing employees;
- (b) Identify statutory barriers to the Secretary's authority to discipline or terminate any employee who has jeopardized the health, safety, or well-being of a veteran, and to recruit, reward, and retain high-performing employees; and report such barriers to the Secretary for consideration as to the need for legislative changes;
- (c) Work closely with relevant VA components to ensure swift and effective resolution of veterans' complaints of wrongdoing at the VA; and
- (d) Work closely with relevant VA components to ensure adequate investigation and correction of wrongdoing throughout the VA, and to protect employees who lawfully disclose wrongdoing from retaliation.

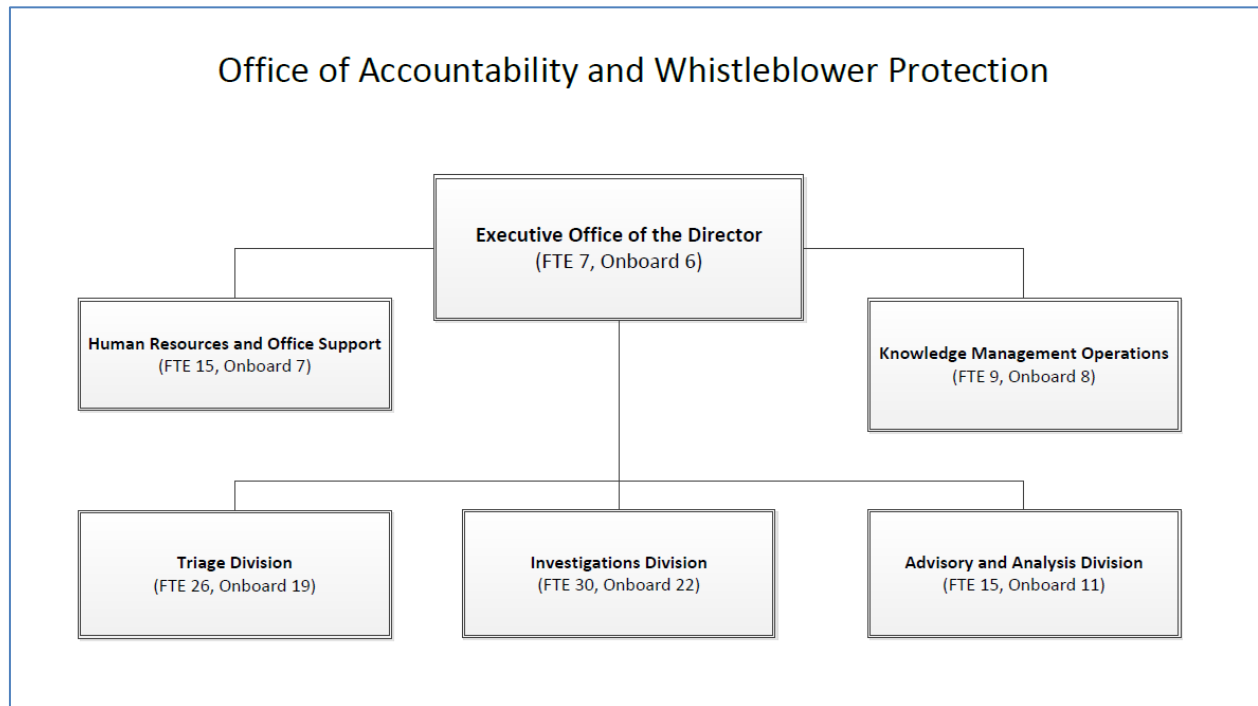
On June 22, 2017, Congress presented the President with crucial legislation to permanently effect change in VA regarding accountability and whistleblower protection. The President signed this bill as Public Law 115-41, the VA Accountability and Whistleblower Protection Act, on June 23, 2017. This statute codified and expanded OAWP, assigned it specific responsibilities, and implemented new authorities to hold senior leaders and employees accountable. OAWP absorbed the then-current staff and workload of the OAR into its new stand-alone structure. OAWP immediately began operations under its new mandate.

## I. Organization & Structure

Based on the Executive Director's assessment of the requirements to meet its obligations the new organization was initially established with five divisions (Investigations; Advisory & Analysis; Central Whistleblower Office; Knowledge Management & Operations; and Administrative Support) of 96 full-time equivalent employee (FTEE) positions, with approximately 48 actually on-board.

As the Office's workload crystalized around the new authorities and responsibilities of P.L. 115-41 the organizational structure was revised. The structure maintained five divisions, redistributing resources and assignments, as well as adding the Office of Executive Director. The structure is: Office of the Executive Director; Triage Division; Investigations Division; Advisory & Analysis Division; Knowledge Management Operations; and Human Resources and Office Support. This structure consists of 102 FTEE. As of June 1, 2018, OAWP had 73 employees onboard with several additional hires pending.

Since its inception, OAWP has been operating its full range of case work. Starting at approximately 1/3 its authorized staff, the year has been characterized by the challenges in staffing a number of diverse positions to complete the full range of cases and activities under the Public Law.



Staff levels as of June 1, 2018

## Executive Office of the Director –

Leading and supporting OAWP's accountability work, the Executive Office of the Director ensures transparent and timely intake, investigation, and resolution of accountability concerns. This office is the principal interaction point on accountability issues between OAWP and all Senior VA leadership. It provides strategic direction, policy development, training, and ensures integration of OAWP's operations with the Secretary's vision for accountability and whistleblower protection.

The Executive Office of the Director is headed by the Executive Director, Office of Accountability and Whistleblower Protection (OAWP) and includes the Deputy Executive Director, Senior Advisors, the Executive Director's Executive Assistant; and the Human Resources and Operations Support team.

The Executive Office of the Director is responsible for the leadership, administration and support for OAWP's operational divisions: Triage; Investigations; Advisory & Analysis; and Knowledge Management.



Left to Right: Todd Hunter, Deputy Executive Director OAWP;  
Kirk Nicholas, Executive Director OAWP; and Peter O'Rourke, Acting VA Secretary

## Triage Division

Triage Division is the first point of contact for whistleblower disclosures and allegations of senior executive misconduct. The Triage staff assesses the information submitted and, as needed, conducts initial development of the submission with the disclosing party. Triage maintains oversight of all matters submitted to OAWP, ensuring all issues are brought to resolution.

Triage Division consists of a Division Director, two Regional Directors, and 16 Human Resources Specialists (Employee Relations) as Case Managers.

Comprised of competent, capable and compassionate team members that help quickly manage resolution of VA employee whistleblower disclosures. The division determines if matters fall within OAWP's scope and the appropriate course of action to take on each matter. The team provides guidance, oversight, analysis and training on the whistleblower program and ensures all VA administrations implement recommendations from audits and investigations carried out by various entities including Office of Special Counsel (OSC) and Office of Inspector General (OIG).

The Triage Division is the initial entry point for matters within the Office's purview. These submissions include disclosures of information as well as completed reports or other findings (e.g. Merit Systems Protection Board decisions or Office of Special Counsel findings) involving senior leader misconduct. Triage maintains multiple avenues to receive disclosures including via a toll-free telephone number, email, and fax. A website submission form is under development. Whistleblower disclosures and completed reports are further referred for resolution.

The Triage Division refers received whistleblower disclosures for further investigation if there is reason to believe the disclosure is evidence of one of the categories of wrongdoing. See 38 USC §323(c)(1)(D). "Reason to believe" has been applied as "reasonable belief."

Depending on the specifics of the whistleblower disclosure, referrals may be then made to: the Office of Medical Inspector (for clinical or healthcare allegations), Office of Inspector General (for potentially criminal allegations), OAWP's Investigations Division (for allegations involving senior leaders), or the individual VA Administrations (i.e. VHA, VBA, or NCA) or Staff Offices (for allegations of wrongdoing not involving senior leaders or otherwise not referred to another office). Except those disclosures referred to OIG, whistleblower disclosures referred outside OAWP remain under the oversight of OAWP Triage, and require a completed investigatory report be submitted to OAWP for review and acceptance prior to concluding the matter.



Completed determinations, such as MSPB decisions or OSC reports, that include misconduct by a Senior Leader or whistleblower retaliation by a supervisor are referred from the Triage Division directly to the Advisory and Analysis Division for resolution.

OAWP also developed and published an Optional Form for Employee Disclosure to inform and assist employees submitting complete disclosures.

### **Triage statistics**

From June 23, 2017, through June 1, 2018, Triage Division has received nearly 2,000 submissions. The specific types and quantities are displayed on the following charts.

A “whistleblower disclosure” is defined in the VA Accountability and Whistleblower Protection Act as:

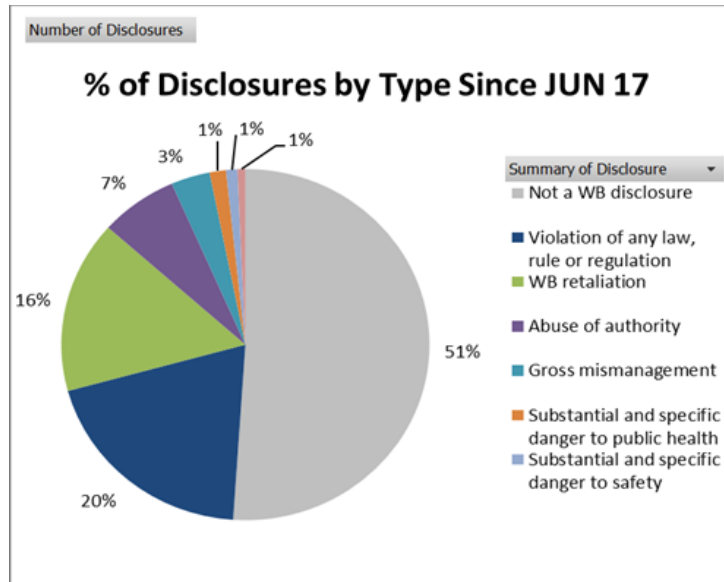
“...[A]ny disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences-

- A violation of law, rule, or regulation; or
- Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”

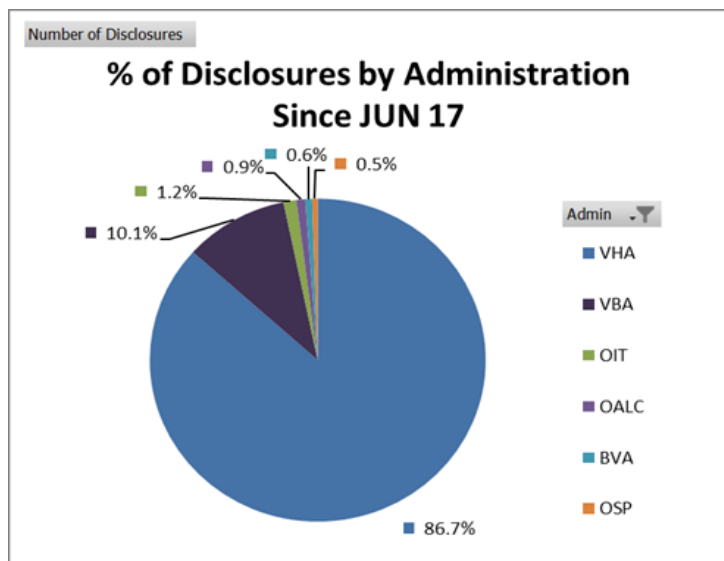
“Reasonably believes” is an objective test based on the information known, or readily discoverable by the submitter, that the information submitted shows alleged wrongdoing.

Submissions that involve an allegation of senior executive misconduct or whistleblower retaliation are referred to OAWP’s Investigation Division. Submissions alleging criminal wrongdoing are referred to the VA Office of the Inspector General. Submissions that are “whistleblower disclosures,” but do not involve senior executive misconduct or whistleblower retaliation are referred to the appropriate Administration or Staff Office for investigation. Referred “whistleblower disclosures” remain subject to OAWP oversight and the resulting investigation is subject to review and acceptance by OAWP.

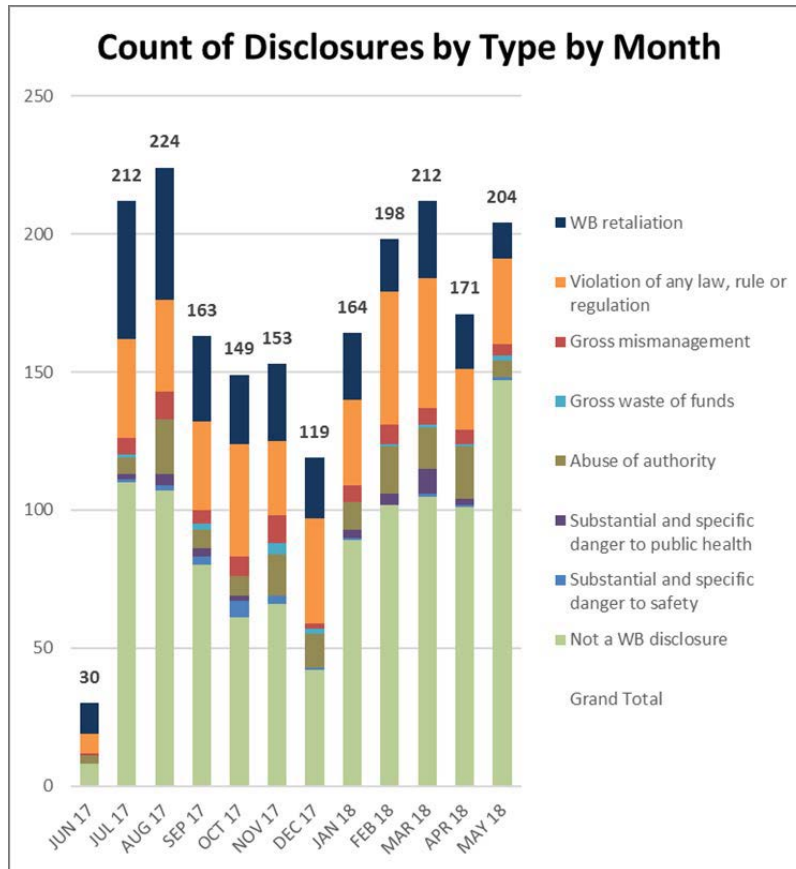
Submissions that do not meet the statutory definition of a “whistleblower disclosure” and do not involve allegations of senior executive wrongdoing are referred to the appropriate VA Administration or Staff Office for awareness. These “non-whistleblower disclosures” do not require an investigation or report to OAWP.



The above chart displays the breakdown of disclosures by general category of the disclosure as received by OAWP since June 2017 through May 2018.



The above chart displays the percentage of disclosures received broken down by Administration or Staff Office from June 2017 through May 2018.



The above chart graphically displays the types of disclosures received by month from June 2017 through May 2018.

**Count of Disclosures by Type, by Month – Details**

Disclosure Category	JUN 17	JUL 17	AUG 17	SEP 17	OCT 17	NOV 17	DEC 17	JAN 18	FEB 18	MAR 18	APR 18	MAY 18	Grand Total
WB retaliation	11	50	48	31	25	28	22	24	19	28	20	13	319
Violation of any law, rule or regulation	7	36	33	32	41	27	38	31	48	47	22	31	393
Gross mismanagement	1	6	10	5	7	10	2	6	7	6	5	4	69
Gross waste of funds		1		2		4	2		1	1	1	2	14
Abuse of authority	3	6	20	7	7	15	12	10	17	15	19	6	137
Substantial and specific danger to public health		2	4	3	2			3	4	9	2		29
Substantial and specific danger to safety		1	2	3	6	3	1	1		1	1	1	20
Not a WB disclosure	8	110	107	80	61	66	42	89	102	105	101	147	1018
Grand Total	30	212	224	163	149	153	119	164	198	212	171	204	1999

The above chart displays the type of disclosures received by month from June 2017 through May 2018.

## Investigations Division

Investigations Division is the most visible division in OAWP, interacting with witnesses and persons-of-interest to resolve cases. Investigators conduct inquiries to gather evidence and testimony to resolve allegations of senior executive misconduct or whistleblower retaliation. Depending on the specifics of a case, inquiries may be conducted on-site or virtually.

Investigations Division is currently comprised of a Division Director, two Regional Directors, and as of June 1, 2018, 19 Human Resources Specialists (Employee Relations) as Administrative Investigators.

The Division began operations on June 23, 2017 with 15 Investigators, since October 2017 this number has increased to 21 Investigators as of June 1, 2018. The two Regional Directors and 6 additional Investigators will enter on duty after June 1, 2018.

Investigations Division is the primary entity within the VA for investigating senior leader misconduct, including allegations of whistleblower retaliation. The division assesses allegations and determines the appropriate scope and method of investigation. Investigators plans and conducts the actual investigations, gathering relevant evidence to substantiate or not substantiate the allegations. Investigators are typically assigned in two-person teams with a Lead and secondary investigator assigned to each case.

## Investigations Statistics

On June 23, 2017, Investigations Division had a legacy workload from the Office of Accountability Review of 116 investigations involving 216 Persons of Interest (POIs).

From June 23, 2017, through June 1, 2018, Investigations Division:

Completed 128 investigations involving 236 POIs;

Received 261 cases involving 482 Senior Leaders;

Had 125 pending or ongoing investigations, involving 264 POIs.

Current Investigations Lifecycle Timeline as of June 1, 2018:

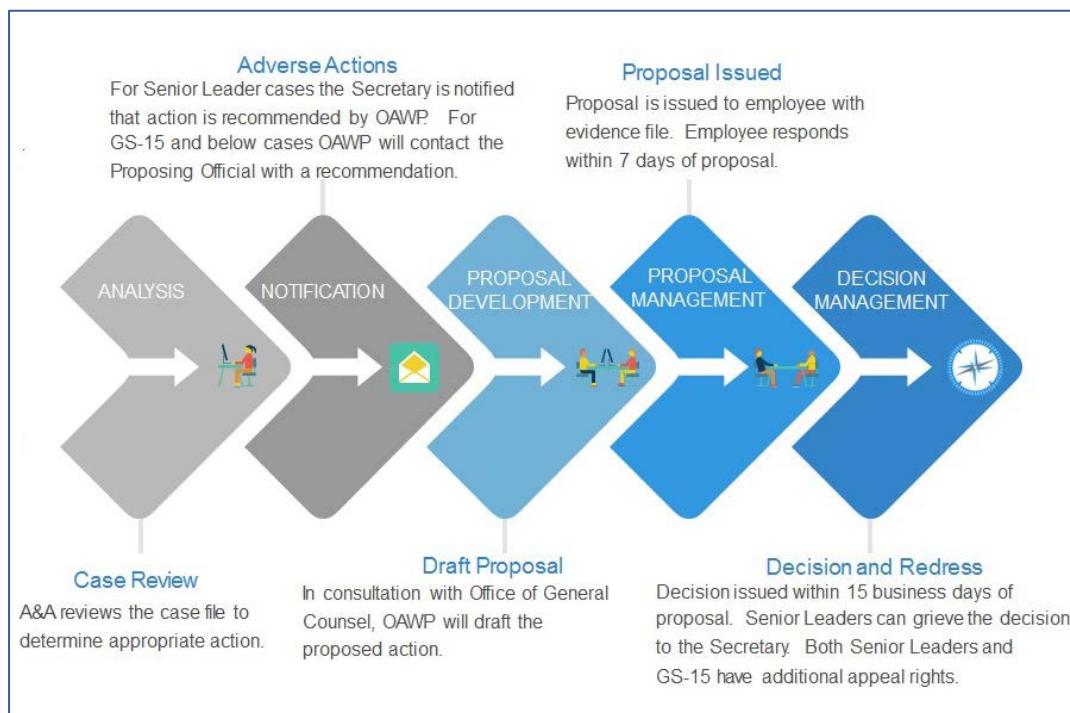


## Advisory and Analysis Division

Advisory and Analysis Division is the principal accountability arm of OAWP. The staff analyzes investigative results and advises VA leadership regarding appropriate steps to resolve matters. These could include performance management, disciplinary actions, or recommending no action.

Advisory and Analysis Division is comprised of a Division Director and 10 Human Resources Specialists (Employee Relations).

Advisory and Analysis Division makes recommendations regarding disciplinary and accountability actions to the Secretary and other senior officials. The division works closely with senior management to prepare disciplinary actions in instances of senior leader misconduct or poor performance. Advisory & Analysis also provides training to VA leadership on the Accountability Law and provides guidance to management officials on the implementation of the Accountability Act and whistleblower protections.



## Advisory and Analysis Statistics

From June 23, 2017 through June 1, 2018, Advisory and Analysis Division:

Received 39 cases directly from Triage as fully developed matters (e.g. MSPB decisions or OSC findings) involving 65 POIs;

Completed 182 cases, including 130 cases resulting from OAWP investigations;

Recommended disciplinary or adverse actions in 54 cases involving 58 unique POIs;

Had 49 potential disciplinary or adverse actions.

Advisory and Analysis Division has recommended disciplinary or adverse action against individuals occupying senior executive positions under 38 U.S.C. §713 as shown on the accompanying two pages.

"Administration" indicates the major organizational subdivision for which the subject employee works.

"OAWP Recommendation" reflects the Advisory and Analysis Division's recommendation to the Proposing Official.

"Action Proposed" is determined by the Proposing Official.

"Initial Decision" reflects the determination of the Deciding Official.

"Grievance Decision" reflects the VA Secretary's decision regarding any grievance filed by the subject employee regarding the Initial Decision.

<b>Administration</b>	<b>OAWP Recommendation</b>	<b>Action Proposed</b>	<b>Decision</b>	<b>Grievance Decision</b>
VHA	Removal	Removal	Removal	No grievance filed
VHA	30-day suspension	No action	No action	No grievance available
VHA	Removal	Demotion	Demotion	Grievance Denied (Demotion Upheld)
VBA	15-day suspension	1-day suspension	Reprimand	No grievance filed
VHA	Removal	Demotion (to GS-14)	Demotion (to GS-14)	Mitigated to a Demotion to GS-15
VHA	Reprimand	Reprimand	Reprimand	Mitigated to admonishment
VHA	5 – 10-day suspension. OAWP later recommended no action.	No action	No action	No grievance available
VHA	15 – 30-day suspension	Reprimand	Reprimand	No grievance filed
VHA	5 – 10-day suspension	Admonishment	Admonishment	No grievance available
VHA	60-day suspension – removal	3-day suspension	Reprimand	No grievance filed
VBA	60-day suspension – removal	60-day suspension	Retired in lieu of decision	No grievance available
VHA *OSC Report (minimum 12-day required)	15-day suspension	15-day suspension	15-day suspension	No grievance filed

Continuing the Advisory and Analysis Division recommendations of disciplinary or adverse action against individuals occupying senior executive positions under 38 U.S.C. §713 as shown.

"Administration" indicates the major organizational subdivision for which the subject employee works.

"OAWP Recommendation" reflects the Advisory and Analysis Division's recommendation to the Proposing Official.

"Action Proposed" is determined by the Proposing Official.

"Initial Decision" reflects the determination of the Deciding Official.

"Grievance Decision" reflects the VA Secretary's decision regarding any grievance filed by the subject employee regarding the Initial Decision.

<b>Administration</b>	<b>OAWP Recommendation</b>	<b>Action Proposed</b>	<b>Decision</b>	<b>Grievance Decision</b>
VHA	Reprimand	Written Counseling	None (Counseling is not proposed/decided)	
VHA	Reprimand	Reprimand	Written counseling	No grievance available
VHA	30-day suspension	None – employee retired 3/31 before proposal issued	None	No grievance available
VHA	Reprimand	Written counseling	None (Counseling is not proposed/decided)	No grievance available
VHA	15-day suspension – removal	Written counseling	None (Counseling is not proposed/decided)	No grievance available
OGC	Demotion - Removal	Demotion	Written Counseling	No grievance available
VHA	Removal	Removal	Settlement Agreement (retired)	No grievance available
VHA	Removal	Removal	None - Resigned same day as proposal	No grievance available
VHA	Reprimand – 5-day suspension	Reprimand	Admonishment	No grievance available
VHA *OSC Report (minimum 12-day suspension required)	Removal	12-day suspension	Retired in lieu of suspension	No grievance available
VHA	Removal	None - Resigned prior to proposal	None - Resigned prior to proposal	No grievance available



## **OAWP Operational Support**

### **Knowledge Management Operations**

Knowledge Management Operations provides and maintains the data backbone to OAWP. It manages and improves the automated systems used by OAWP to assign, track, and report on matters. It provides strategic analytical assessments and business process improvements.

Knowledge Management Operations is comprised of a Division Director and 7 staff members.

Knowledge Management Operations serves as the primary lead for providing process, systems, analytical and performance consultative services to OAWP. Team members develop and maintain solutions for workload data tracking and management. The division serves as the primary entity responding to requests for data contained in the Office of Accountability and Whistleblower Protection systems.

### **Human Resources and Office Support**

Human Resources and Office Support is comprised of 7 staff members in several functional areas. The Human Resources and Office Support (HRO) Division provides support to the Executive Director, the Deputy Executive Director, and the four primary divisions of the Office of Accountability and Whistleblower Protection (OAWP). Program Management Analysts focus on budget and finance; prepare correspondence responding to queries from Members of Congress, veterans and the public; field FOIA requests; coordinate and travel arrangements for OAWP's investigators and principals; human resources activities for recruiting, hiring and supporting full time employees.

## **II. Budget**

OAWP had a budget of 17.3 million dollars for personnel and operations costs for June 23, 2017 through June 1, 2018. The funding was provided on a reimbursable basis from the VA Administrations and Staff Offices.

### III. Other Activities

OAWP briefed VHA leadership at the Veterans Integrated Service Network (VISN) Directors Conference in November 2017. Following that meeting, OAWP conducted six briefings to individual VISN Executive Leadership Conferences involving the relevant VISN Director, the Medical Center Directors, Chiefs of Staff, Associate Directors for Patient Care Services, Assistant Directors and Associate Directors for each of the facilities in the relevant VISN. OAWP briefed the VBA Senior Leader Conference in April 2018.

OAWP made similar presentations to the American Federation of Government Employees (AFGE) leadership conferences in New Orleans LA in January 2018 and Orlando FL in February 2018 as well as a presentation to all five national unions' leadership in April 2018. The briefings provided an overview of OAWP and an introduction to the operation of Accountability and Whistleblower Act.



Manchester VA Medical Center  
Manchester, NH



Edith Nourse Rogers Memorial  
Veterans Hospital  
Bedford MA



Roseburg VA Health Care System,  
Roseburg, OR



William Jennings Bryan Dorn  
VA Medical Center  
Columbia, SC



VA Central Western Massachusetts  
Healthcare System  
Leeds, MA



C.W. Bill Young  
VA Medical Center  
Bay Pines, FL

OAWP has also responded to emergent VA needs by deploying intake and investigation teams to Manchester MA, Bedford MA, Roseburg OR, Columbia SC, Leeds (Northampton) MA, , and Bay Pines FL, as situations emerged in those locations. These teams provided real time disclosure intake and development of critical concerns at those facilities.

## IV. Moving Forward

### 1. Improving investigatory capability

OAWP hired a Senior Advisor for Investigations to improve the training and credentialing of our Administrative Investigators. OAWP reviewed its investigatory needs and re-wrote the position description for investigators to improve focus on investigatory skills, hiring personnel in the 1810, General Investigation, Occupational Series.

### 2. Enhancing Advisory and Analysis Division's operations

OAWP is seeking, through the following recommendations for statutory changes, authority to hire Attorneys to practice law within the scope of OAWP operations.

### 3. Improving case management and data analytics

OAWP reviewed several software platforms to provide case management and information management functionality and expects to implement a solution before the end of Fiscal Year 2018.

### 4. Improving whistleblower protection

#### a. Whistleblower Program Specialists

The majority of processes built into OAWP are focused on resolving individual disclosures and holding Senior Leaders accountable for misconduct or poor performance. However, as OAWP matured the need for employees specializing in working with those disclosing information to our office, particularly those potentially experiencing retaliation, became apparent. Initially as a trial, OAWP hired one Whistleblower Program Specialist (WPS) and has added an additional employee in this role. The WPS works with disclosing employees to address and resolve difficulties experienced by the disclosing employee arising from their disclosing activity. Additionally, the WPSs are responsible for conducting whistleblower disclosure awareness training, advising OAWP leadership on whistleblower issues, and conducting day-to-day program management of the Office's whistleblower program.

#### b. Whistleblower Integration/Mentor program

An aspect of making disclosures of alleged wrongdoing is that the employee making the disclosure may feel themselves marginalized or excluded from the organizational group. Additionally, for some employees, whistleblowing turns into an ad-hoc job description. Balancing the need to encourage employees to disclose alleged



Executive Director OAWP meeting with facility leadership and the first participants in the Mentor/Integration Program

wrongdoing with the need to have employees performing the work for which they were hired. For application in appropriate cases, OAWP has created an Integration/Mentor program to engage the disclosing employee along with their senior leadership.

Adapted to the specifics of the individual case, an OAWP WPS works with the employee and the designated senior leader to facilitate communication, address concerns from either party,

and ideally reach a result that has the employee gainfully performing VA work and management engaged in addressing issues identified through whistleblowing or other activities. Since June 23, 2017, through June 1, 2018, the program has been used twice on a trial or prototype basis and is expected to broaden in application as OAWP's capacity improves.

#### c. Employee Assistance Program for whistleblowers through OAWP

Many VA facilities use in-house Employee Assistance Programs (EAP) to offer personal counseling to individual employees. Employees who disclose wrongdoing, particularly those who feel they are facing retaliation for doing so, experience different stressors than a typical employee. Additionally, where EAP services are offered using in-house counselors there is often significant concern regarding confidentiality of matters discussed in the counseling setting. Consequently, OAWP intends to seek an external EAP program under the general authority granted to the heads of agencies under title 5, section 7901. The program is expected to be provided by a contract provider to address multiple biopsychosocial areas. Access to this specific EAP program would be through the OAWP whistleblower program. Based on discussion with whistleblowers as to the types of stressors they encountered following their disclosures.

#### 5. Whistleblower training under 38 USC § 733

Title 38 U.S.C. § 733 requires the Secretary of the VA to provide training to the Department's employees and supervisors regarding whistleblower disclosures. While there is current training provided under the earlier requirements of the No Fear Act and

the OSC Certification Program under 5 U.S.C. 2302(c), it is not as comprehensive as the requirements under section 733. OAWP intends to finalize the training materials and deployment plan by September 30, 2018.

## **V. Recommendations for Changes to Statute**

### **1. To create an independent legal unit:**

**Explanation:** To create, maintain and advance the quasi-independent nature of OAWP, a separate legal unit is essential. The Act itself separated OAWP from OGC for a reason as the OGC is responsible for defending the agency and being the sole source of legal advice and guidance. However, in matters in which the Office of General Counsel has provided legal advice and accountability actions result potentially from that advice, there is at least the appearance of a conflict. Additionally, reliance on OGC for legal review and guidance has introduced delays into the proposal process as well competing or conflicting guidance to management officials.

### **2. To add attorneys as a staffing resource and ensure OAWP access to agency information:**

**Explanation:** This change is to ensure OAWP access to agency information in a manner and scope similar to the Office of Special Counsel while providing a similar degree of protection to any information gathered under these auspices. The addition of lawyers to the staffing resources of OAWP is necessary to ensure the quasi-independent nature of OAWP.

### **3. To prevent contradictory results from the filing of multiple complaints:**

**Explanation:** Multiple venues to pursue complaints risks contradictory results and needlessly burden both processes. This change is intended to limit personal or individual claims to a single venue and not use the whistleblower process to pursue individual, non-whistleblower retaliation claims. Effectively carving out EEO complaints and negotiated grievances from being raised as whistleblower disclosures.

### **4. To increase efficiency, permit the sharing of information between OAWP, OIG, and OSC:**

**Explanation:** Maintaining anonymity of employees who make whistleblower disclosures while permitting effective oversight is a balance of information interests. The current constraints among OAWP, OIG, and OSC regarding information sharing result in redundant efforts and severely reduce efficiency.

### **5. To provided consistency in 714 actions and provide a “safety valve” for whistleblower actions being held in abeyance under 714:**

**Explanation:** These changes are intended to ensure similar burdens of proof for all disciplinary actions from reprimands through removals. The current arrangement places a higher burden of proof for lesser actions (reprimands and suspensions of 14



days or less). Additionally, the language affecting the whistleblower protections is to clarify that when the action is held due to open cases with OSC or OAWP cases, the statutory timeframe to decide the proposal is suspended until the hold is resolved. Finally, while uncommon, the need for a “safety valve” to ensure employees who present a threat to self or others are not retained despite having open cases with OSC or OAWP. As pictured the “safety valve” would require a determination at no lower level than an Under or Assistant Secretary to ensure a disinterested review of potential threat.

#### **6. To ensure consistency in disciplinary action timeframes involving whistleblower retaliation:**

**Explanation:** This change is to align the timeframes and process of section 731 with those already present for discipline in sections 713 and 714. Section 731 provides a unique, combined advance notice & reply period. This unique statutory requirement alongside the statutory timeframes required under sections 713 or 714 presents an obstacle to proposing actions involving whistleblower retaliation and other misconduct.

#### **7. To create consistency in appeals standards for all VA employees, including title 38 providers:**

**Explanation:** This change involves setting the burden of proof at substantial evidence and lack of mitigation on appeals of actions involving professional conduct or competence or not involving professional conduct or competence taken against title 38 providers thereby ensuring greater consistency across the workforce.

#### **9. Resources:**

**Explanation:** Line item budget authority. To develop and maintain a quasi-independent nature, direct budgeting for the operations of the Office is essential. As currently structured, the Office receives its funding through reimbursement from the very entities it investigates. This arrangement also leaves the Office’s future operations vulnerable to zeroing out through administrative action within the Department.

#### **10. To broaden OAWP’s statutory coverage for investigations and proposing discipline:**

**Explanation:** The current language in 38 U.S.C. section 323(c)(1)(H) describes a specific sub-set of individuals to be investigated by OAWP. While the listed individuals represent some senior leaders in the VA, a broader definition is needed to ensure all supervisors and managers responsible for leading major VA activities are consistently held to the same standard of accountability. For example, a typical VA medical center is led by a group of five employees (Medical Center Director; Chief of Staff; Nurse

Executive; Assistant Director, and Associate Director). As currently written only three (Medical Center Director, Chief of Staff and Nurse Executive) of the five are within the scope of OAWP's statutory charter. Additionally, the senior leadership of other major VA facilities fall outside the current statutory coverage such as Cemetery Directors and General Schedule office directors of VBA Regional Offices. Finally, the current language of 38 U.S.C. section 323(c)(1)(I) requires recommendations to the Secretary for such disciplinary action as the Assistant Secretary considers appropriate based on the results of the OAWP investigations. Request consideration of designating the Assistant Secretary, AWP as the proposing official for all disciplinary actions





## Appendix - Revised Report submission from Section 211 Requirements

In accordance with the VA Accountability and Whistleblower Protection Act, P.L. 115-41, Section 211, the Secretary of Veterans Affairs shall measure and collect information on the outcomes of disciplinary actions carried out by the Department of Veterans Affairs during the three-year period ending on the date of the enactment of this Act and the effectiveness of such actions.

This report requires historical information not systematically gathered during the look back period (three-year period prior to enactment of the Act). In late 2014 the Office of Accountability Review (OAR), in response to the access-to-care crisis, developed an ad-hoc tracking system outside the Department's human resources information system. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The Office of Accountability and Whistleblower Protection (OAWP) will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

Following discussion with Committee staff the Department assembled an estimate of the time needed to capture the retrospective date. Detailed later in the report, the broad estimate is approximately 7,000 staff hours.

The specific content requirements of Section 211(b)(2) are:

### **(A) The information collected under subsection (a)(2).**

Subsection (a)(2) sought the following data:

- (A) The average time from the initiation of an adverse action against an employee at the Department to the final resolution of that action.

Pre-June 23, 2017, average processing times from proposal to effective date was 57 days.

- (B) The number of distinct steps and levels of review within the Department involved in the disciplinary process and the average length of time required to complete these steps.
- (C) The rate of use of alternate disciplinary procedures compared to traditional disciplinary procedures and the frequency with which employees who are subject to alternative disciplinary procedures commit additional offenses.

(D) The number of appeals from adverse actions filed against employees of the Department, the number of appeals upheld, and the reasons for which the appeals were upheld;

(E) The use of paid administrative leave during the disciplinary process and the length of such leave.

Regarding (a)(2)(A), for the period January 1, 2015 – June 22, 2017, the average time from issuance of a proposal of an adverse action until decision of that action was 55 days.

Regarding (a)(2)(B), the specific steps and levels for review involved in the disciplinary process within the Department varies with the specific authority being exercised (e.g. title 5, title 38). Broadly the steps are: information gathering or investigation; assessment of results; development of proposed action; issuance of, and reply to, the proposed action; decision regarding the proposed action; appeal or grievance regarding the decision. There is no data available regarding the length of time for each step.

Regarding (a)(2)(C)-(E), during the three-year period prior to enactment of the Act, the Department did not have systems or other capabilities to capture and analyze the requested information regarding: usage of alternative disciplinary procedures; appeals of disciplinary actions; or the use of paid administrative leave in the disciplinary process.

In order to capture the data requested that was not acquired at the time the actions were taken the following estimates were developed:

Approximately 5,700 hours to review and capture the data for over 5,600 adverse actions taken during lookback period [(a)(2)(A) and (B)].

Approximately 500 staff hours to review and capture data related to alternative discipline and use of authorized absence during the lookback period [(a)(2)(C) and (E)].

Approximately 800 hours to review and capture the required data for the nearly 3,000 appeals over the lookback period [(a)(2)(D)].

The estimated times are purely touch times to review the files and capture the necessary data.

However, to establish a baseline to assess the impact and effectiveness of the Act the following data was gathered from the ad-hoc VA Wide Adverse Action Tracker:

The figures in the four left columns represent the numbers for the labeled groups of employees (e.g. SL & SES Actions); The figures in the two far-right columns represent the numbers for the entire workforce for that action and time period.

## Senior Executive Actions:

Count of Actions by Type, SL & SES Actions  
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP

SL & SES Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	5	0.1%		6,432	1,207
Admonishment		0.0%		1,638	323
Reprimand	2	0.1%		1,595	301
Short Suspension		0.0%		1,254	210
Long Suspension		0.0%		376	66
Demotion		0.0%		39	10
Probationary Termination		0.0%		797	151
Removal	3	0.4%		733	146
06/2015-06/2016	15	0.2%	2	8,131	1,389
Admonishment	1	0.1%		1,961	307
Reprimand	7	0.3%	1	2,008	319
Short Suspension		0.0%		1,590	296
Long Suspension	2	0.4%	1	462	79
Demotion	2	3.3%		61	11
Probationary Termination		0.0%		1,042	196
Removal	3	0.3%		1,007	181
06/2016-06/2017	9	0.1%	1	8,233	395
Admonishment	4	0.2%		2,011	84
Reprimand	3	0.2%	1	1,968	80
Short Suspension		0.0%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination	1	0.1%		1,044	57
Removal	1	0.1%		1,063	56
Pre-OAWP Total	29	0.1%	3	22,796	2,991
Post-OAWP					
06/2017-06/2018	7	0.1%		9,097	178
Admonishment	1	0.0%		2,003	30
Reprimand	1	0.0%		2,099	40
Short Suspension		0.0%		1,779	39
Long Suspension	1	0.3%		316	8
Demotion	1	1.1%		93	9
Probationary Termination		0.0%		1,175	21
Removal	3	0.2%		1,632	31
Post-OAWP Total	7	0.1%		9,097	178
Grand Total	36	0.1%	3	31,893	3,169

**Count of Actions by Type, SES Title 38 Equiv. Actions  
Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

SES Title 38 Equiv. Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
<b>Pre-OAWP</b>					
09/2014-06/2015	9	0.1%		6,432	1,207
Admonishment	3	0.2%		1,638	323
Reprimand	1	0.1%		1,595	301
Short Suspension		0.0%		1,254	210
Long Suspension	1	0.3%		376	66
Demotion		0.0%		39	10
Probationary Termination	2	0.3%		797	151
Removal	2	0.3%		733	146
06/2015-06/2016	9	0.1%	1	8,131	1,389
Admonishment	5	0.3%		1,961	307
Reprimand	1	0.0%		2,008	319
Short Suspension	1	0.1%	1	1,590	296
Long Suspension		0.0%		462	79
Demotion		0.0%		61	11
Probationary Termination	2	0.2%		1,042	196
Removal		0.0%		1,007	181
06/2016-06/2017	9	0.1%	2	8,233	395
Admonishment	2	0.1%		2,011	84
Reprimand		0.0%		1,968	80
Short Suspension	2	0.1%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination		0.0%		1,044	57
Removal	5	0.5%	2	1,063	56
Pre-OAWP Total	27	0.1%	3	22,796	2,991
<b>Post-OAWP</b>					
06/2017-06/2018	11	0.1%		9,097	178
Admonishment	1	0.0%		2,003	30
Reprimand	4	0.2%		2,099	40
Short Suspension	1	0.1%		1,779	39
Long Suspension		0.0%		316	8
Demotion	1	1.1%		93	9
Probationary Termination	1	0.1%		1,175	21
Removal	3	0.2%		1,632	31
Post-OAWP Total	11	0.1%		9,097	178
Grand Total	38	0.1%	3	31,893	3,169

## General Workforce:

**Count of Actions by Type, Title 38 Other**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

Title 38 Other Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	833	13.0%	131	6,432	1,207
Admonishment	261	15.9%	45	1,638	323
Reprimand	244	15.3%	35	1,595	301
Short Suspension	130	10.4%	21	1,254	210
Long Suspension	32	8.5%	3	376	66
Demotion	5	12.8%	1	39	10
Probationary Termination	61	7.7%	6	797	151
Removal	100	13.6%	20	733	146
06/2015-06/2016	1,044	12.8%	136	8,131	1,389
Admonishment	300	15.3%	26	1,961	307
Reprimand	366	18.2%	45	2,008	319
Short Suspension	135	8.5%	26	1,590	296
Long Suspension	43	9.3%	5	462	79
Demotion	9	14.8%		61	11
Probationary Termination	54	5.2%	7	1,042	196
Removal	137	13.6%	27	1,007	181
06/2016-06/2017	990	12.0%	39	8,233	395
Admonishment	303	15.1%	9	2,011	84
Reprimand	277	14.1%	8	1,968	80
Short Suspension	162	9.9%	9	1,631	87
Long Suspension	41	9.2%	3	448	24
Demotion	8	11.8%	1	68	7
Probationary Termination	56	5.4%		1,044	57
Removal	143	13.5%	9	1,063	56
Pre-OAWP Total	2,867	12.6%	306	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,132	12.4%	9	9,097	178
Admonishment	313	15.6%	1	2,003	30
Reprimand	358	17.1%	3	2,099	40
Short Suspension	181	10.2%	1	1,779	39
Long Suspension	40	12.7%	1	316	8
Demotion	4	4.3%		93	9
Probationary Termination	58	4.9%		1,175	21
Removal	178	10.9%	3	1,632	31
Post-OAWP Total	1,132	12.4%	9	9,097	178
Grand Total	3,999	12.5%	315	31,893	3,169

**Count of Actions by Type, GS 1-6**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

GS 1-6 Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	2,456	38.2%	450	6,432	1,207
Admonishment	630	38.5%	106	1,638	323
Reprimand	542	34.0%	95	1,595	301
Short Suspension	490	39.1%	85	1,254	210
Long Suspension	151	40.2%	32	376	66
Demotion	3	7.7%		39	10
Probationary Termination	332	41.7%	70	797	151
Removal	308	42.0%	62	733	146
06/2015-06/2016	2,953	36.3%	462	8,131	1,389
Admonishment	725	37.0%	96	1,961	307
Reprimand	655	32.6%	88	2,008	319
Short Suspension	584	36.7%	93	1,590	296
Long Suspension	175	37.9%	27	462	79
Demotion	4	6.6%		61	11
Probationary Termination	436	41.8%	89	1,042	196
Removal	374	37.1%	69	1,007	181
06/2016-06/2017	3,142	38.2%	140	8,233	395
Admonishment	771	38.3%	28	2,011	84
Reprimand	727	36.9%	28	1,968	80
Short Suspension	601	36.8%	29	1,631	87
Long Suspension	175	39.1%	7	448	24
Demotion	11	16.2%	1	68	7
Probationary Termination	447	42.8%	26	1,044	57
Removal	410	38.6%	21	1,063	56
Pre-OAWP Total	8,551	37.5%	1,052	22,796	2,991
Post-OAWP					
06/2017-06/2018	3,307	36.4%	75	9,097	178
Admonishment	740	36.9%	15	2,003	30
Reprimand	702	33.4%	19	2,099	40
Short Suspension	644	36.2%	16	1,779	39
Long Suspension	120	38.0%	5	316	8
Demotion	10	10.8%	1	93	9
Probationary Termination	503	42.8%	7	1,175	21
Removal	588	36.0%	12	1,632	31
Post-OAWP Total	3,307	36.4%	75	9,097	178
Grand Total	11,858	37.2%	1,127	31,893	3,169

**Count of Actions by Type, GS 7-10**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

GS 7-10 Actions				Total Actions	Total # of
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements	Taken	Settlements
<b>Pre-OAWP</b>					
09/2014-06/2015	857	13.3%	219	6,432	1,207
Admonishment	231	14.1%	71	1,638	323
Reprimand	248	15.5%	61	1,595	301
Short Suspension	178	14.2%	35	1,254	210
Long Suspension	37	9.8%	6	376	66
Demotion	16	41.0%	4	39	10
Probationary Termination	68	8.5%	19	797	151
Removal	79	10.8%	23	733	146
06/2015-06/2016	1,077	13.2%	233	8,131	1,389
Admonishment	281	14.3%	62	1,961	307
Reprimand	272	13.5%	43	2,008	319
Short Suspension	221	13.9%	54	1,590	296
Long Suspension	66	14.3%	14	462	79
Demotion	15	24.6%	3	61	11
Probationary Termination	112	10.7%	28	1,042	196
Removal	110	10.9%	29	1,007	181
06/2016-06/2017	1,035	12.6%	48	8,233	395
Admonishment	253	12.6%	12	2,011	84
Reprimand	267	13.6%	11	1,968	80
Short Suspension	256	15.7%	12	1,631	87
Long Suspension	55	12.3%	3	448	24
Demotion	15	22.1%	1	68	7
Probationary Termination	73	7.0%	5	1,044	57
Removal	116	10.9%	4	1,063	56
<b>Pre-OAWP Total</b>	<b>2,969</b>	<b>13.0%</b>	<b>500</b>	<b>22,796</b>	<b>2,991</b>
<b>Post-OAWP</b>					
06/2017-06/2018	1,248	13.7%	22	9,097	178
Admonishment	292	14.6%	5	2,003	30
Reprimand	306	14.6%	7	2,099	40
Short Suspension	262	14.7%	3	1,779	39
Long Suspension	48	15.2%		316	8
Demotion	24	25.8%	2	93	9
Probationary Termination	93	7.9%	1	1,175	21
Removal	223	13.7%	4	1,632	31
<b>Post-OAWP Total</b>	<b>1,248</b>	<b>13.7%</b>	<b>22</b>	<b>9,097</b>	<b>178</b>
<b>Grand Total</b>	<b>4,217</b>	<b>13.2%</b>	<b>522</b>	<b>31,893</b>	<b>3,169</b>

**Count of Actions by Type, GS 11-15**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

GS 11-15 Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	737	11.5%	168	6,432	1,207
Admonishment	200	12.2%	48	1,638	323
Reprimand	229	14.4%	59	1,595	301
Short Suspension	157	12.5%	34	1,254	210
Long Suspension	51	13.6%	9	376	66
Demotion	11	28.2%	4	39	10
Probationary Termination	36	4.5%	6	797	151
Removal	53	7.2%	8	733	146
06/2015-06/2016	948	11.7%	261	8,131	1,389
Admonishment	231	11.8%	70	1,961	307
Reprimand	282	14.0%	82	2,008	319
Short Suspension	202	12.7%	57	1,590	296
Long Suspension	68	14.7%	14	462	79
Demotion	24	39.3%	8	61	11
Probationary Termination	40	3.8%	8	1,042	196
Removal	101	10.0%	22	1,007	181
06/2016-06/2017	951	11.6%	60	8,233	395
Admonishment	246	12.2%	19	2,011	84
Reprimand	267	13.6%	17	1,968	80
Short Suspension	196	12.0%	10	1,631	87
Long Suspension	62	13.8%	5	448	24
Demotion	27	39.7%	2	68	7
Probationary Termination	39	3.7%	2	1,044	57
Removal	114	10.7%	5	1,063	56
Pre-OAWP Total	2,636	11.6%	489	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,099	12.1%	24	9,097	178
Admonishment	272	13.6%	4	2,003	30
Reprimand	273	13.0%	6	2,099	40
Short Suspension	209	11.7%	4	1,779	39
Long Suspension	43	13.6%	1	316	8
Demotion	41	44.1%	5	93	9
Probationary Termination	31	2.6%		1,175	21
Removal	230	14.1%	4	1,632	31
Post-OAWP Total	1,099	12.1%	24	9,097	178
Grand Total	3,735	11.7%	513	31,893	3,169



**Count of Actions by Type, WS 1-15**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

WS 1-15 Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	107	1.7%	19	6,432	1,207
Admonishment	22	1.3%	5	1,638	323
Reprimand	36	2.3%	5	1,595	301
Short Suspension	25	2.0%	4	1,254	210
Long Suspension	6	1.6%	1	376	66
Demotion	4	10.3%	1	39	10
Probationary Termination	4	0.5%	1	797	151
Removal	10	1.4%	2	733	146
06/2015-06/2016	114	1.4%	13	8,131	1,389
Admonishment	31	1.6%	4	1,961	307
Reprimand	26	1.3%	2	2,008	319
Short Suspension	32	2.0%	4	1,590	296
Long Suspension	5	1.1%		462	79
Demotion	4	6.6%		61	11
Probationary Termination	5	0.5%	1	1,042	196
Removal	11	1.1%	2	1,007	181
06/2016-06/2017	130	1.6%	4	8,233	395
Admonishment	36	1.8%		2,011	84
Reprimand	35	1.8%	1	1,968	80
Short Suspension	33	2.0%	1	1,631	87
Long Suspension	8	1.8%		448	24
Demotion	6	8.8%	2	68	7
Probationary Termination	7	0.7%		1,044	57
Removal	5	0.5%		1,063	56
Pre-OAWP Total	351	1.5%	36	22,796	2,991
Post-OAWP					
06/2017-06/2018	174	1.9%	5	9,097	178
Admonishment	40	2.0%		2,003	30
Reprimand	45	2.1%	1	2,099	40
Short Suspension	49	2.8%	1	1,779	39
Long Suspension	4	1.3%		316	8
Demotion	11	11.8%	1	93	9
Probationary Termination	7	0.6%		1,175	21
Removal	18	1.1%	2	1,632	31
Post-OAWP Total	174	1.9%	5	9,097	178
Grand Total	525	1.6%	41	31,893	3,169

**Count of Actions by Type, WL 1-15**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

WL 1-15 Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
<b>Pre-OAWP</b>					
09/2014-06/2015	23	0.4%	4	6,432	1,207
Admonishment	8	0.5%	2	1,638	323
Reprimand	5	0.3%	1	1,595	301
Short Suspension	5	0.4%		1,254	210
Long Suspension	3	0.8%	1	376	66
Demotion		0.0%		39	10
Probationary Termination	1	0.1%		797	151
Removal	1	0.1%		733	146
06/2015-06/2016	31	0.4%	9	8,131	1,389
Admonishment	9	0.5%	3	1,961	307
Reprimand	9	0.4%	2	2,008	319
Short Suspension	5	0.3%	1	1,590	296
Long Suspension	2	0.4%		462	79
Demotion	1	1.6%		61	11
Probationary Termination	4	0.4%	2	1,042	196
Removal	1	0.1%	1	1,007	181
06/2016-06/2017	29	0.4%	1	8,233	395
Admonishment	6	0.3%		2,011	84
Reprimand	13	0.7%	1	1,968	80
Short Suspension	4	0.2%		1,631	87
Long Suspension		0.0%		448	24
Demotion		0.0%		68	7
Probationary Termination	2	0.2%		1,044	57
Removal	4	0.4%		1,063	56
<b>Pre-OAWP Total</b>	<b>83</b>	<b>0.4%</b>	<b>14</b>	<b>22,796</b>	<b>2,991</b>
<b>Post-OAWP</b>					
06/2017-06/2018	52	0.6%		9,097	178
Admonishment	11	0.5%		2,003	30
Reprimand	18	0.9%		2,099	40
Short Suspension	14	0.8%		1,779	39
Long Suspension		0.0%		316	8
Demotion		0.0%		93	9
Probationary Termination	1	0.1%		1,175	21
Removal	8	0.5%		1,632	31
<b>Post-OAWP Total</b>	<b>52</b>	<b>0.6%</b>		<b>9,097</b>	<b>178</b>
<b>Grand Total</b>	<b>135</b>	<b>0.4%</b>	<b>14</b>	<b>31,893</b>	<b>3,169</b>

**Count of Actions by Type, WG 1-15**  
**Pre (09/01/2014-06/22/2017) and Post (06/23/2017-05/31/2018) OAWP**

WG 1-15 Actions				Total Actions Taken	Total # of Settlements
Action Taken // Pre & Post OAWP	Actions Taken	% of Total	# of Settlements		
Pre-OAWP					
09/2014-06/2015	1,293	20.1%	211	6,432	1,207
Admonishment	264	16.1%	46	1,638	323
Reprimand	253	15.9%	44	1,595	301
Short Suspension	254	20.3%	31	1,254	210
Long Suspension	94	25.0%	14	376	66
Demotion		0.0%		39	10
Probationary Termination	266	33.4%	47	797	151
Removal	162	22.1%	29	733	146
06/2015-06/2016	1,779	21.9%	257	8,131	1,389
Admonishment	359	18.3%	44	1,961	307
Reprimand	351	17.5%	53	2,008	319
Short Suspension	382	24.0%	59	1,590	296
Long Suspension	100	21.6%	18	462	79
Demotion	2	3.3%		61	11
Probationary Termination	336	32.2%	52	1,042	196
Removal	249	24.7%	31	1,007	181
06/2016-06/2017	1,811	22.0%	97	8,233	395
Admonishment	375	18.6%	15	2,011	84
Reprimand	346	17.6%	13	1,968	80
Short Suspension	356	21.8%	25	1,631	87
Long Suspension	107	23.9%	6	448	24
Demotion		0.0%		68	7
Probationary Termination	380	36.4%	23	1,044	57
Removal	247	23.2%	15	1,063	56
Pre-OAWP Total	4,883	21.4%	565	22,796	2,991
Post-OAWP					
06/2017-06/2018	1,962	21.6%	39	9,097	178
Admonishment	312	15.6%	5	2,003	30
Reprimand	370	17.6%	3	2,099	40
Short Suspension	407	22.9%	13	1,779	39
Long Suspension	60	19.0%	1	316	8
Demotion	1	1.1%		93	9
Probationary Termination	448	38.1%	11	1,175	21
Removal	364	22.3%	6	1,632	31
Post-OAWP Total	1,962	21.6%	39	9,097	178
Grand Total	6,845	21.5%	604	31,893	3,169

**(B) The findings of the Secretary with respect to the measurement and collection carried out under subsection (a).**

The Department's human resources information system gathers data based on the government-wide and VA-specific data needs. Current government-wide requirements do not support requests for data outside the specific data elements captured in the regular course of business.

In late 2014 the Office of Accountability Review (OAR), in response to the access-to-care crisis, developed an ad-hoc tracking system outside the Department's human resources information system. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The OAWP will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

**(C) An analysis of the disciplinary procedures and actions of the Department.**

The ad-hoc tracking system does not capture responsive data to this request. Therefore, the OAWP is not able to analyze the procedures and actions. This ad-hoc system captures limited de-identified data points as entered by each individual facility human resources offices across the Department.

The OAWP will discontinue use of the current ad-hoc system once an effective disciplinary tracking system has been procured.

**(D) Suggestions for improving the disciplinary procedures and actions of the Department.**

The requirements under the VA Accountability and Whistleblower Protection Act have provided an opportunity to improve disciplinary procedures and actions of the Department.

Employees hired under title 38 United States Code, section 7401(1) should be subject to the same burden of proof and provided the same whistleblower protections as those covered by section 714. Currently these employees are not covered by section 714 which is inconsistent with the employee population.

**(E) Such other matters as the Secretary considers appropriate.**

For period, June 23, 2017 – April 30, 2018, the Office of Accountability and Whistleblower Protection has been involved in the following number of action involving senior leaders throughout the Department:

2 Admonishments	4 Reprimands
3 Demotions	5 Suspensions
7 Removals	2 Resignations in lieu of Removal
5 Retirements in Lieu of Removal	